

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of No. 94950-6

KEVIN LIGHT-ROTH,
Petitioner.

RESPONSE TO MOTION FOR
DISCRETIONARY REVIEW

I. INTRODUCTION

The State seeks discretionary review of the decision of the Court of Appeals granting Mr. Light-Roth's Personal Restraint Petition (PRP) and remanding for resentencing. The State argues, in part, that the decision of the Court of Appeals has broad application to numerous young offenders who were sentenced without consideration of the mitigating attributes of their youth. *State's MDR*, p. 2. Mr. Light-Roth agrees.

Although the parties disagree about whether the decision below was correct or conflicts with other state court decisions, Mr. Light-Roth agrees that this case presents an issue of substantial public interest. RAP 13.4(b)(4). For that reason, review is warranted.

1 II. ARGUMENT

2 Recent research on adolescent brain development confirms the
3 commonsense understanding that children are different from adults in ways
4 that are critical to identifying appropriate criminal sentences. Adolescence is
5 marked by “transient rashness, proclivity for risk, and inability to assess
6 consequences.” *Graham v. Florida*, 560 U.S. 48, 68 (2010).
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9 Washington courts are now permitted to consider those differences in
10 individual cases at sentencing. *State v. O'Dell*, 183 Wash. 2d 680, 695-96, 358
11 P.3d 359 (2015). Whether that new understanding applies to old cases is an
12 issue of substantial public importance.
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15 The Court of Appeals held that *O'Dell* applied retroactively:
16

17 “...*O'Dell* expanded youthful defendants' ability to argue for an
18 exceptional sentence, and was a significant change in the law. Because
19 that change in the law was material to Light-Roth's sentence and
20 applies retroactively, we may consider Light-Roth's petition. We
21 conclude that Light-Roth deserves an opportunity to have a sentencing
22 court meaningfully consider whether his youthfulness justifies an
exceptional sentence below the standard range.”

23 *In re PRP of Light-Roth*, No. 75129-8-I, 2017 WL 3473644, at *1 (Wash. Ct.
24 App. Aug. 14, 2017). Light-Roth contends that the Court of Appeals was
25 correct. This Court should affirm that decision.
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1 However, Light-Roth agrees with the State that the decision below
2 provides a justification to request resentencing for numerous individuals who
3 were similarly sentenced without consideration of their youthful attributes
4 and whose sentences would be unlawful today.
5

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7 It is impossible to predict how many individuals will seek resentencing
8 now or soon based on the decision below. However, until this Court decides
9 whether *O'Dell* applies retroactively it is likely that few, if any, of those cases
10 will move forward.
11

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13 For that reason, review is warranted.

14 III. CONCLUSION

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16 For the reasons set forth above, Mr. Light-Roth does not oppose the
17 State's motion for discretionary review.
18

19 DATED this 13th day of September 2017.

20 Respectfully Submitted:

21
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Transmittal Information

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